

Remarks/ Arguments

Upon entry of the foregoing amendments, Claims 1 to 29, 32 to 35, 37 to 45 and 53 to 73 will be pending in this patent application. Claims 1, 8, 14, 15, 28, 37, 38, 42 to 45, 53 and 57 to 61, 63 to 67, and 69 to 72 have been amended, without prejudice. Claim 73 is new. Support for new Claim 73 is found, for example, in original Claim 8.

Claims 1, 28, 37 and 38 have been amended to specify that the claimed process is a CVD process. Support for the amendment to Claims 1, 28, 37 and 38 is found, for example, at paragraphs [0039] and [0101] of Applicants' specification. Claim 15 has been amended to be consistent with Claim 1.

Claim 8 has been amended to correct a problem with the recited Markush group.

Claim 14 has been amended to change "precursor" to --material--.

Claims 53 to 72 have been amended to more clearly define Applicants' invention. Support for the amendments to Claims 53 to 72 is found at paragraphs [0056] to [0061] of Applicants' specification.

The Action includes rejections under 35 U.S.C. §§ 102(a), 103(a), 112, second paragraph, and provisional rejections under the judicially created doctrine of obviousness-type double patenting. In view of the following remarks, reconsideration and withdrawal of the rejections are requested respectfully.

Discussion of the Rejections Under 35 U.S.C. § 112, Second Paragraph

Claims 8, 14, 53, 57 to 59, 63 to 65 and 69 to 71 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as their invention. Applicants submit respectfully that the foregoing amendments render moot all of the rejections based upon 35 U.S.C. § 112, second paragraph.

Discussion of the Rejections Under 35 U.S.C. § 112, First Paragraph

Claims 57, 58, 63, 64, 69 and 70 have been rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Applicants submit respectfully that the foregoing amendments render moot all of the rejections based upon 35 U.S.C. § 112, first paragraph.

Discussion of the Obviousness-Type Double Patenting Rejections

Claims 1 to 8, 10 to 15, 22, 25 to 28, 32 to 34, 37, 41 to 45, and 53 to 72 have been rejected under the judicially-created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1 to 3, 7 to 14, 16 to 22 and 25 to 41 of commonly-owned U.S. Patent No. 7,098,149 (previously co-pending Application No. 10/379,466). Although Applicants traverse this rejection, Applicants submit herewith a Terminal Disclaimer in compliance with 37 C.F.R. § 1.321 to overcome the rejection.

Claims 1 to 35 and 37 to 45 have been provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 2-26, 31-34, 38-45, and 50-54 of copending Application No. 10/295,568 ("the 568 application"); claims 1-5, 6-8, 13, 27-30, and 39 of copending Application No. 10/404,190 ("the 190 application"); claims 1-6, 8-10, 13, 15, 17-18, 20, 22-23, and 61-67 of copending Application No. 10/409,468 ("the 468 application") or, alternatively, claims 1 to 47 and 50 to 54 of copending Application No. 11/228,223 ("the 223 application"); and claims 1-14, 20-22, 24-27, and 30 of copending Application No. 10/842,503 ("the 503 application"). The aforementioned applications are currently pending and are assigned to the assignee of the present application. Although Applicants disagree that the claims of the above-identified applications render the present claims obvious, Applicants request that the provisional

obviousness-type double patenting rejections be held in abeyance until the patentability of claims under 35 U.S.C. § 103(a) is resolved. Upon some identification of allowable subject matter, a suitable terminal disclaimer may be filed if any of the above-identified patent applications issues before the allowance of the claims of the present application.

Discussion of the Rejections Under 35 U.S.C. § 102(e) or (a)

Claims 1 to 4, 10, 12, 15, 17 to 19, 26, 28 and 29 have been rejected under 35 U.S.C. § 102(e) or (a) as allegedly anticipated by U.S. patent application Publication No. 2005/0255710 to You et al. ("the You publication"). Applicants respectfully traverse this rejection because the You publication does not disclose each and every element of Applicants' claimed invention.

Applicants' claimed invention defines a process for preparing a porous film, the process comprising the steps of: forming a composite film onto at least a portion of a substrate **by a CVD process**, wherein the composite film comprises at least one silicon-based structure-forming material and at least one pore-forming material, and wherein the composite film is substantially free of Si-OH bonds; and exposing the composite film to at least one ultraviolet light source within a non-oxidizing atmosphere for a time sufficient to remove at least a portion of the at least one pore-forming material contained therein and provide the porous film (*see, e.g.,* amended Claim 1).

Significantly, the You publication does not disclose or suggest forming a composite film onto at least a portion of a substrate **by a CVD process**; rather, the You publication discloses compositions that are solution/emulsion polymers that are applied by a **spin-coating process** (*see, e.g.,* the You publication at paragraph [0078]). In other words, the polymers of the You publication are fully formed and dispersed in solution with a porogen prior to application and curing to form the film (*id.* at paragraphs [0063] to [0079]).

Applicants' claimed invention, in contrast, defines a CVD process wherein the material is formed *in situ* upon the structure-forming precursors (*i.e.*, monomers) reacting with each other, *e.g.*, in a gaseous phase.

Claims 37 to 41 have also been rejected under 35 U.S.C. § 102(a) or (e) as allegedly being anticipated or, alternatively, under 35 U.S.C. § 103(a) as allegedly obvious over the You publication. Because independent Claims 37 and 38 have also been amended to recite a CVD process, Applicants submit respectfully that the You publication does not teach or suggest every recitation of the claimed invention for at least the reasons detailed above. Accordingly, reconsideration and withdrawal of the rejections over the You publication are requested respectfully.

Discussion of the Rejections Under 35 U.S.C. § 103(a)

Dependent Claims 5 to 9, 20 to 25, 27 and 32 to 35 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the You publication. Applicants respectfully traverse this rejection.

Dependent Claims 5 to 9, 20 to 25 and 27 are dependent from independent Claim 1 and dependent Claims 32 to 35 are dependent from independent Claim 28. Since, as discussed above, the You publication does not teach or suggest the basic invention, even if the You publication did disclose the additional limitations of Applicants' dependent claims (*arguendo*), the You publication is still incapable of rendering obvious the claimed invention because You does not teach or suggest a CVD process. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

Conclusion

Applicants believe that the foregoing constitutes a complete and full response to the Action of record. Applicants respectfully submit that this application is now in condition for allowance. Accordingly, an indication of allowability and an early Notice of Allowance are respectfully requested.

The Commissioner is hereby authorized to charge the fee required and any additional fees that may be needed to Deposit Account No. 01-0493 in the name of Air Products and Chemicals, Inc.

Respectfully submitted,

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